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NEW DELHI, JUNE 30—JULY 6, 2013, SATURDAY/ASADHA 9—ASADHA 15, 1935

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह पृथक संकलन के रूप में रखा जा सके ।
Separate Paging is given to this Part in order that it may be filed as a separate compilation.

भाग II—खण्ड 3—उप-खण्ड (iii)
PART II—Section 3—Sub-section (iii)

केन्द्रीय अधिकारियों (संघ राज्य क्षेत्र प्रशासनों को छोड़कर) द्वारा जारी किए गए आदेश और अधिसूचनाएं
Orders and Notifications Issued by Central Authorities (other than the Administrations of Union Territories)

भारत निर्वाचन आयोग

नई दिल्ली, 2 जुलाई, 2013

आ.अ. 33.—लोक प्रतिनिधित्व अधिनियम, 1950 (1950 का 43) की धारा 13-क की उप-धारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए भारत निर्वाचन आयोग लक्षद्वीप संघ राज्य क्षेत्र के प्रशासन के परामर्श से एतद्वारा, श्री अशोक कुमार जे., आई.ए.एस. (ए.जी.एम.यू. : 2008), को उनके कार्यभार ग्रहण करने की तारीख से आगामी आदेशों तक के लिए लक्षद्वीप संघ राज्य क्षेत्र के मुख्य निर्वाचन अधिकारी के रूप में नामित करता है ।

2. श्री अशोक कुमार जे., आई.ए.एस., लक्षद्वीप संघ राज्य क्षेत्र प्रशासन के अधीन सभी पदभार या किसी कार्य के पदभारों को तत्काल सौंप देंगे या धारण करना समाप्त कर देंगे, जो कि वे ऐसा पदभार ग्रहण करने से पहले धारण कर रहे थे ।

3. श्री अशोक कुमार जे., आई.ए.एस., मुख्य निर्वाचन अधिकारी, लक्षद्वीप संघ राज्य क्षेत्र के रूप में कार्य करते हुए लक्षद्वीप संघ राज्य क्षेत्र प्रशासन के अधीन किसी भी प्रकार का कोई अतिरिक्त कार्यभार ग्रहण नहीं करेंगे सिवाय इसके कि उनको संघ राज्य सचिवालय में निर्वाचन विभाग का प्रभारी, सरकार का सचिव पदाभिहित किया जायेगा ।

[सं. 154/एल.के.डी./2013/नि.यो.अ.]

आदेश से,

सुमित मुखर्जी, सचिव

ELECTION COMMISSION OF INDIA

New Delhi, the 2nd July, 2013

O.N. 33.—In exercise of the powers conferred by sub-section (1) of Section 13A of the Representation of the People Act, 1950 (43 of 1950), the Election Commission of India, in consultation with the Government of Lakshadweep, hereby nominates **Sh. Ashok Kumar J., I.A.S.** (AGMU:2008) as the Chief Electoral Officer for the UT of Lakshadweep with effect from the date he takes over charge and until further orders.

2. **Sh. Ashok Kumar J., I.A.S.** shall cease to hold and hand over forthwith the charge of all or any charges of work under the Administration of Union Territory of Lakshadweep, which he may be holding before such assumption of office.

3. **Sh. Ashok Kumar J., I.A.S.** while functioning as the Chief Electoral Officer, Lakshadweep shall not hold any additional charge whatsoever under the Administration of the Union Territory of Lakshadweep except that he should be designated Secretary to Administration of the Union Territory of the Lakshadweep in charge of Election Department in the Union Territory Secretariat.

[No. 154/LKD/2013-EPS]

By Order,

SUMIT MUKHERJEE, Secy.

नई दिल्ली, 2 मई, 2013

आ.अ. 34.—लोक प्रतिनिधित्व अधिनियम, 1951 (1951 का 43) की धारा 106 के अनुसरण में, भारत निर्वाचन आयोग, 2009 की निर्वाचन अर्जी संख्या 2 में इलाहाबाद उच्च न्यायालय के तारीख 8 मार्च, 2013 के निर्णय को एतद्वारा प्रकाशित करता है।

(निर्णय इस अधिसूचना के अंग्रेजी भाग में छपा है।)

[सं. 82/उ.प्र.-लो.स./2/2009(इला.)]

आदेश से,

आर. के. श्रीवास्तव, प्रधान सचिव

New Delhi, the 2nd May, 2013

O.N. 34.—In pursuance of Section 106 of the Representation of the People Act, 1951 (43 of 1951), the Election Commission of India hereby publishes the Judgement dated 8th March, 2013 of the High Court of Judicature at Allahabad in Election Petition No. 2 of 2009.

IN THE HIGH COURT OF JUDICATURE AT ALLAHABAD

ELECTION PETITION NO. 2 OF 2009

(Under Section 80, 81 & 117 of the Representation of People Act, 1951)

District - Jhansi

(46th Jhansi Parliamentary Constituency)

Hari Shanker Jijauriya,
S/o. Late Har Charan,
R/o. 286, Aligole, PO : Head Post Office,
Jhansi City, District-Jhansi

...Petitioner

VERSUS

1. Shri Pradeep Jain (Aditya),
S/o. Shri V. K. Jain,
R/o. 52, Gosaipura, PO : Head Post Office,
Jhansi City,
District-Jhansi.

.... Respondent
(AFR)

Reserved on 7-2-2013

Delivered on 8-3-2013

Case :- ELECTION PETITION No. 2 of 2009

Petitioner :- Hari Shanker Jijauriya

Respondent :- Sri Pradeep Jain

Petitioner Counsel :- S.P.Sharma, In Person, N.K.Pandey **Respondent Counsel :-** S.N. Pandey, A.K.Pandey, B.N. Singh, Havaladar Verma, Himanshu, K.R. Singh, U.N. Sharma

Hon'ble Sudhir Agarwal, J.

1. Respondent no.1 Sri Pradeep Jain and election petitioner Harishanker Jijauriya (hereinafter referred to as the 'petitioner') sought to contest parliamentary election, 2009 from 46th Jhansi Parliamentary Constituency. Nomination form of the petitioner was rejected by R.O., vide order dated 11.04.2009 and as a result thereof, the petitioner could not contest the election, polling whereof took place on 30.04.2009 and result was declared on 16.05.2009, wherein respondent no. 1 returned as elected candidate.

2. It is this election of respondent no.1, as Member of Parliament, from 46th Jhansi Parliamentary Constituency, which has been challenged in the present election on the ground that nomination of petitioner was illegally and invalidly rejected by R.O. as a result whereof, the petitioner could not contest the election and, hence, election of respondent no.1 is illegal, being in the teeth of Section 80-A read with Section 100(1)(c) of the Representation of the People Act, 1951 (*hereinafter referred to as "Act, 1951"*).

3. Certain facts which are not in dispute but relevant for adjudication of this matter are summarized as under:

4. Election Commission of India (hereinafter referred to as "E.C.I.") notified parliamentary election for 46th Jhansi Parliamentary Constituency on 2.4.2009, on which date, election notice was also issued by Returning Officer (hereinafter referred to as "R.O."), declaring election programme as under:

First date of nomination	02.04.2009
Last date of nomination	09.04.2009
Scrutiny of nomination	11.04.2009
Withdrawal of nomination	13.04.2009
Date of poll	30.04.2009
Counting of votes	16.05.2009
Declaration of result	16.05.2009

5. The petitioner submitted his nomination form before R.O. on 08.04.2009. On the same day, a notice was issued to petitioner by R.O., alleging that particulars mentioned in nomination form about petitioner and his proposers do not tally with electoral details in the voters list, therefore, he should submit evidence about voters list on 11.04.2009. The notice was issued under section 33(5) of Act, 1951.

6. The petitioner vide letter dated 11-04-2009 informed R.O. that he has applied for certified copy of voters list but the same has not been made available by the office of R.O., for which, he (petitioner) is not responsible. It thus cannot be said that he (petitioner) has submitted any wrong or incorrect information, deliberately. He requested R.O. to afford him another opportunity of hearing on nomination form and permit him to participate in the election. The said application admittedly was submitted on or after 9 PM in the evening since the letter contained an averment that certified copy of voters list was not made available till 9 PM.

7. The petitioner however, received order dated 11-04-2009 communicating him about rejection of his nomination by R.O. Nomination was rejected mainly on the ground that proposers' particulars mentioned in nomination form did not tally with the details in the voters' list and therefore, nomination form was not in accordance with Rules. On 13-04-2009 the R.O. published final list of candidates whose nominations were found in accordance with statute and it had 18 candidates, out of which, 4 belong to recognized National and State level Political parties, 6 to the registered political parties other than National or State level and 8 independents. Respondent no.1 was candidate of Indian National Congress and ultimately returned elected on 16-05-2009.

8. Respondent no.1 has contested this petition by filing his written statement/reply dated 18-12-2009. It states that the petitioner was negligent in giving exact description of proposers with electoral number, correct address and their constituency. He committed several discrepancies in the nomination form, which was rightly rejected by R.O., being not in accordance with statute.

9. Initially, petitioner had impleaded E.C.I. and R.O. also as respondents no. 2 and 3 respectively. On an application, raising objection about their impleadment, this Court vide orders dated 26-04-2011 and 20-11-2009 deleted both the aforesaid respondents from array of parties. Presently, only Pradeep Kumar Jain, returned candidate is the sole respondent in this case.

10. The following issues were framed by Court's order dated 18-5-2011.

"(1) Whether or not it was incumbent upon the petitioner to get the nomination paper scribed by 10 proposers being electors of the 46th Jhansi Parliamentary Constituency by mentioning their names and electoral roll numbers as entered in electoral roll of the constituency?"

(2) Whether the statutory requirement of mentioning of the electoral roll numbers of the proposers as entered in electoral roll of the constituency, as required under Section 33(4) of the Representation of Peoples Act, 1951, could be substituted by appending the copy of their so called voter identification cards, as alleged?"

(3) Whether or not it was the duty of the petitioner to get all the requisite documents ready and prepared prior to the date of nomination, especially when the election was declared and notified much prior to the date of nomination, and if the petitioner has failed to comply with the statutory requirement, its effect?"

(4) Whether the rejection of nomination paper of a candidate for non compliance of statutory requirement of mentioning of the electoral roll numbers of the proposers can be assailed under section 100 (1) (c) of the Representation of Peoples Act 1951 merely on the ground that the candidate could not obtain the certified copy of the electoral roll within time, and if so, whether the election held in a constituency can be put to stake on account of the laches on the part of an individual?"

(5) Whether rejection of nomination of the petitioner was even otherwise valid? If not, what is its effect on the election."

(6) To what relief the petitioner is entitled in case the aforesaid issues are answered in his favour."

11. The petitioner initially sought to adduce oral evidence by adducing 9 witnesses including election petitioner himself. The said request made vide application no. 225062 of 2011 was allowed vide order dated 14-3-2012 and summons were issued to the following 11 witnesses i.e. (1) Hari Shanker Jijauriya (2) Sunil Sahu (3) Smt. Sunita (4) Ram Singh (5) Umesh (6) Purshottam (7) Devi Das (8) Phool Chandra Sahu (9) Bholu Sahu (10) Munna Lal (11) Prashant.

12. Besides the petitioner also requested to summon the following documents from the office of District Election Officer, Jhansi.

"1. Petitioner's nomination paper, the treasury challan for Rs. 10,000 along with the documents filed by the election petitioner with nomination paper on 8-4-2009. in respect of 46-Jhansi parliamentary constituency of District Jhansi."

2. Electoral roll 2009 issued by District Assistant Election Officer, Jhansi in respect of polling Station 121, 127, 88, 122, 107, 125.

3. Application dated 11-4-2009 along with treasury challan dated 11-4-2009 filed by election petitioner before District Election Officer, Jhansi for issuance of extract of electoral rolls.

4. Objection filed by Election petitioner on 11-4-2009.”

13. Pursuant to Court's order dated 30-07-2012, requisite documents were produced by Sri Atul Kumar, Senior Assistant District Electoral Office, Jhansi on 01-10-2012 and the same were directed to be kept in sealed cover and if the parties want to examine allow them to do so and re-seal the same.

14. However, petitioner actually examined only himself as a witness (PW 1) which examination concluded on 22.11.2012. Others were discharged.

15. On behalf of respondent no.1 also one Rajeev Kumar Agarwal was examined and thereafter, evidence stood closed and petition was finally heard.

16. Mr. N.K. Pandey and S.P. Sharma appeared and advanced their arguments on behalf of election petitioner, while on behalf of respondent no.1, Sri M. Islam and Sri S.N. Pandey, Advocates have made their submissions.

17. Election of respondent no.1 actually has been assailed on the ground that nomination of petitioner has been improperly rejected. All the issues framed above from their very nature and looking to the petitioner's premise in this case, can be dealt with together.

18. The procedure for nomination of candidate is contained in Part V of Act 1951. Section 33 talks of the procedure in respect of presentation of nomination form and requirement for a valid nomination. Relevant extract, i.e., sub-section (1), (4), (5) and (6) read as under:

“33. Presentation of nomination paper and requirements for a valid nomination. (1) On or before the date appointed under clause (a) of section 30 each candidate shall, either in person or by his proposer, between the hours of eleven o' clock in the forenoon and three o' clock in the afternoon deliver to the returning officer at the place specified in this behalf in the notice issued under section 31 a nomination paper completed in the prescribed form and signed by the candidate and by an elector of the constituency as proposer:

Provided that a candidate not set up by a recognised political party, shall not be deemed to be duly nominated for election from a constituency unless the nomination paper is subscribed by ten proposers being electors of the constituency:

Provided further that no nomination paper shall be delivered to the returning officer on a day which is a public holiday:

Provided also that in the case of a local authorities' constituency, graduates' constituency or teachers' constituency, the reference to “an elector of the constituency as proposer” shall be construed as a reference to “ten per cent of the electors of the constituency or ten such electors, whichever is less, as proposers”.

(4) On the presentation of a nomination paper, the returning officer shall satisfy himself that the names and electoral roll numbers of the candidate and his proposer as entered in the nomination paper are the same as those entered in the electoral rolls:

Provided that no misnomer or inaccurate description or clerical, technical or printing error in regard to the name of the candidate or his proposer or any other person, or in regard to any place, mentioned in the electoral roll or the nomination paper and no clerical, technical or printing error in regard to the electoral roll numbers of any such person in the electoral roll or the nomination paper, shall affect the full operation of the electoral roll or the nomination paper with respect to such person or place in any case where the description in regard to the name of the person or place is such as to be commonly understood; and the returning officer shall permit any such misnomer or inaccurate description or clerical, technical or printing error to be corrected and where necessary, direct that any such misnomer, inaccurate description, clerical, technical or printing error in the electoral roll or in the nomination paper shall be overlooked.

(5) Where the candidate is an elector of a different constituency, a copy of the electoral roll of that constituency or of the relevant part thereof or a certified copy of the relevant entries in such roll shall, unless it has been filed along with the nomination paper, be produced before the returning officer at the time of scrutiny.

(6) *Nothing in this section shall prevent any candidate from being nominated by more than one nomination paper:*

Provided that not more than four nomination papers shall be presented by or on behalf of any candidate or accepted by the returning officer for election in the same constituency."

(emphasis added)

19. Section 33-A requires a candidate to furnish certain further information, like his criminal antecedents etc., but the same being not relevant for the purpose of this case, is being skipped hereat.

20. Section 33-B provides that an information not required by the Act or Rules framed thereunder, no candidate shall be liable to disclose or furnish such information.

21. Section 34 deals with deposit to be made by the candidate concerned before submitting his nomination and both the provisions also being not relevant for the present case may be skipped.

22. Section 35 talks of notice of nomination and time and place for scrutiny which has to be given by R.O. on receiving nomination paper. Section 36 talks of scrutiny of nomination and both the provisions (Sections 35 and 36) since have material bearing on the issue in question, are reproduced as under:

"35. Notice of nominations and the time and place for their scrutiny.- *The returning officer shall, on receiving the nomination paper under sub-section (1) or, as the case may be, sub-section (1-A) of section 33, inform the person or persons delivering the same of the date, time and place fixed for the scrutiny of nominations and shall enter on the nomination paper its serial number and shall sign thereon a certificate stating the date on which and the hour at which the nomination paper has been delivered to him, and shall, as soon as may be thereafter, cause to be affixed in some conspicuous place in his office a notice of the nomination containing descriptions similar to those contained in the nomination paper, both of the candidate and of the proposer."*
(emphasis added)

"36. Scrutiny of nominations. (1) *On the date fixed for the scrutiny of nominations under section 30, the candidates, their election agents, one proposer of each candidate, and one other person duly authorized in writing by each candidate, but no other person, may attend at such time and place as the returning officer may appoint; and the returning officer shall give them all reasonable facilities for examining the nomination papers of all candidates which have been delivered within the time and in the manner laid down in section 33.*

(2) *The returning officer shall then examine the nomination papers and shall decide all objections which may be made to any nomination, and may, either on such objection or on his own motion, after such summary inquiry, if any, as he thinks necessary, reject any nomination on any of the following grounds:-*

(a) *that on the date fixed for the scrutiny of nominations the candidate either is not qualified or is disqualified for being chosen to fill the seat under any of the following provisions that may be applicable, namely:-*

Articles 84, 102, 173 and 191,

Parts II of this Act, and sections 4 and 14 of the Government of Union Territories Act, 1963 (20 of 1963); or

(b) *that there has been a failure to comply with any of the provisions of section 33 or section, 34; or*

(c) *that the signature of the candidate or the proposer on the nomination paper is not genuine.*

(3) *Nothing contained in clause (b) or clause (C) of sub-section (2) shall be deemed to authorize the rejection of the nomination of any candidate on the ground of any irregularity in respect of a nomination paper, if the candidate has been duly nominated by means of another nomination paper in respect of which no irregularity has been committed.*

(4) *The returning officer shall not reject any nomination paper on the ground of any defect which is not of a substantial character.*

(5) *The returning officer shall hold the scrutiny on the date appointed in this behalf under clause (b) of section 30 and shall not allow any adjournment of the proceedings except when such proceedings are interrupted or obstructed by riot or open violence or by causes beyond his control:*

Provided that in case an objection is raised by the returning officer or is made by any other person the candidate concerned may be allowed time to rebut it not later than the next day but one following the date fixed for scrutiny, and the returning officer shall record his decision on the date to which the proceedings have been adjourned.

(6) *The returning officer shall endorse on each nomination paper his decision accepting or rejecting the same and, if the nomination paper is rejected, shall record in writing a brief statement of his reasons for such rejection.*

(7) *For the purposes of this section, a certified copy of an entry in the electoral roll for the time, being in force of a constituency shall be conclusive evidence of the fact that the person referred to in that entry is an elector for that constituency, unless it is proved that he is subject to a disqualification mentioned in section 16 of the Representation of the People Act, 1950 (43 of 1950).*

(8) *Immediately after all the nomination papers have been scrutinized and decisions accepting or rejecting the same have been recorded, the returning officer shall prepare a list of validly nominated Candidates, that is to say, candidates whose nominations have been found valid, and affix it to his notice board.” (emphasis added)*

23. For conduct of election, Rules have also been framed i.e., Conduct of Election Rules 1961 (hereinafter referred to as “Rules 1961”).

24. Rule 2(1)(e) of Rules 1961 defines “electoral roll” and 2(1)(f) defines “electoral roll number” and read as under :

“(e) “electoral roll”, in relation to an election by an assembly members, means the list maintained under section 152 by the R.O. for that election;”

“(f) “electoral roll number” of a person means-

(i) the serial number of the entry in the electoral roll in respect of that person;

(ii) the serial number of the part of the electoral roll in which such entry occurs; and

(iii) the name of the constituency to which the electoral roll relates;”

25. Rule 2(1) (g) defines “Form” which reads as under:

“(g) “Form” means a Form appended to these rules and in respect of any election in a State, includes a translation thereof in any of the languages used for official purposes of the State;”

26. Rule 4 provides that every nomination paper presented under sub section (1) of Section 33 shall be completed in such one of the Forms 2-A to 2-E as may be appropriate. It also contains a proviso which reads as under:

“Provided that a failure to complete or defect in completing, the declaration as to symbols in a nomination paper in Form 2-A or Form 2-B shall not be deemed to be a defect of a substantial character within the meaning of sub-section (4) of section 36.”

27. In the present case, it is not disputed by the parties before this Court that appropriate form is Form 2A. Rule 4-A provides for the form of affidavit to be filed at the time of delivery of nomination paper and reads as under:

“The candidate or his proposer, as the case may be, shall, at the time of delivering to the R.O. the nomination paper under sub-section (1) of section 33 of the Act, also deliver to him an affidavit sworn by the candidate before a Magistrate of the first class or a Notary in Form 26.”

(emphasis added)

28. The proposers signing a nomination form are supposed to give particulars like, name of the component assembly constituency, electoral roll number, Part No. of electoral roll, serial no. in that part, full name, signature and date. For a Parliamentary Constituency, election nomination paper of an independent is required to be subscribed by ten proposers, who are electors of the constituency concerned, vide proviso to Section 33 (1) of Act 1951.

29. In the present case, from a perusal of record, it is evident that in Part 2, Form 2A the particulars of ten proposers in column 1 to 5 were filled in as under

Sl. No.	Number of electoral roll of proposers			Full Name
	Name of component constituency	Electoral Roll No.	Serial No. in the part of electoral roll	
1	2	3	4	5
1.	Ram Singh	127	1496	Ram Singh
2.	Umesh	127	1491	Umesh
3.	Sunil	122	821	Sunil
4.	Phoolchand	107	647	Phoolchand
5.	Bhola Sahu	107	649	Bhola Sahu
6.	Prashant Soni	125	117	Prashant Soni
7.	Devi Das	122	-	Devi Das
8.	Smt. Sunita	81	805	Smt. Sunita
9.	Purshottam	121	1169	Purshottam
10.	Munna Lal	85	826	Munna Lal

30. Copies of electoral roll are also before the Court. I find that following entries of respective proposers do not tally:

31. Part number of electoral roll and serial number in that part with respect to Munna Lal as per copy of electoral roll are 125 and 659 respectively, while in the nomination paper the same are mentioned as 85 and 826 respectively.

32. In respect of Sunil, nomination paper mentioned 122 and 821, in column 3 and 4 respectively, but electoral roll shows that in Part 122, Serial number 821 name of Dhanna wife of Bhagwan Das is mentioned. I am told that name of Sunil finds mention in Part 88 of electoral roll, at serial number 323 which was not at all mentioned in any of the columns in the entire list of proposers.

33. Similarly, in respect of Smt. Sunita, columns number 3 and 4 contain entries as 81 and 805 respectively, though actually her name finds mention in Part 121, Serial No. 780 of electoral roll.

34. 10th proposer Munna Lal has been shown as voter in Part 85, Serial No. 826 of electoral roll but the learned counsel for the petitioner admits that his name does not find mention in any electoral roll in the concerned constituency and he is not at all a voter of the constituency.

35. In respect of another proposer, Devi Das, Part 122 has been mentioned in column 3 whereas column 4, regarding his Serial number is blank. Copy of electoral roll shows name of Devi Das at Serial No. 549.

36. Learned counsel for petitioner submitted that mere wrong mention or non mention of one or other column meant for proposers cannot be said to be a defect of substantial nature. The R.O. could have verified the above details if some labour would have been put in by him going through the electoral roll of the constituency. Therefore, for this reason alone, rejection of nomination form of petitioner is patently illegal and unjust. He submitted that neither certified copy of electoral roll was made available to him nor R.O. himself made such enquiry himself, though he could have done, since copy of electoral roll was available with him, but having failed to perform his duty effectively, he was not justified in penalising petitioner by rejecting nomination form, that too, for technical error which was identifiable and rectifiable. Hence rejection of nomination of petitioner being wholly illegal and contrary to procedure prescribed in the statute, is vitiated and same is liable to be set aside.

37. Per contra, learned counsel appearing for respondent submitted that duty to correctly complete nomination form and submit with requisite information lies upon the candidate concerned. The R.O. is not supposed to engage in a meticulous enquiry if candidate himself has not cared to furnish complete information or has given incorrect information, and has not attempted to rectify, even till the date of scrutiny. In the circumstances, the R.O. had no option but to reject such nomination form and therefore, he has not committed any error or illegality or otherwise in rejecting nomination of petitioner, finding the same as not fulfilling the requirement of first proviso to Section 33(4) of Act 1951. Election petition is misconceived having been filed to unnecessarily harass the elected candidate and therefore, liable to be dismissed with

exemplary costs. It is contended that flaws and illegality committed in the nomination form were well within the knowledge of petitioner and he had chosen to drag the candidate into unnecessary litigation for which this Court should pass an order imposing exemplary costs and also to give a message so that any person like the petitioner should not dare to institute such frivolous and baseless litigation to harass an innocent person.

38. Having heard counsel for the parties and perusing the record, I may now proceed to adjudicate the issues formulated hereinabove collectively so as to find out whether nomination form of the petitioner has been rejected illegally and, if so, whether it would render the result of election declaring the respondent elected, vitiated. The statute lays down a very detailed procedure for filing of nomination papers for prospective candidates aspiring to contest an election and quite minute details have been taken care by the legislature. Simultaneously, this is also evident that the legislature has intended that there should not be any casual attempt to reject a nomination paper for titbit or minor irregularity. The R.O. must look into the matter with sincere endeavour to ensure that a valid nomination is filed and taken on record giving genuine opportunity to candidate concerned to contest election. Part-III deals with the notification of General Elections for State and Central both. As soon as notification is issued calling upon a constituency to elect a member or members, the roll of E.C.I. commences. Immediately thereafter the E.C.I. is required to issue a notification in the official gazette appointing various dates, namely, last date for making nomination, date for scrutiny of nomination, last date for withdrawal of candidature, date or dates on which poll shall, if necessary, be taken and date before which election shall be completed, as per requirement of Section 30 of Act 1951. Thereafter comes the roll of R.O. concerned who is supposed to give public notice of intended election in the form and manner as prescribed, inviting nomination of candidates for such election and specify the place at which the nomination papers are to be delivered. This is what requirement of Section 30(1) is. Section 32 talks of the candidate eligible to seek nomination for election. Any person qualified to be chosen to fill the seat for which notification of election has been issued may be nominated as a candidate for election to such a seat. Then comes the procedural part. I may summarize the various steps as discerned from a cumulative reading of Section 33, 33-A, 34, 35, 36 and the Rules 1961.

39. Nomination papers shall be delivered to R.O. at the place specified in the notice issued under section 31, either by the candidate himself or by his proposer. Various steps and requirements are as under:

- (i) Nomination paper has to be submitted on or before the date appointed under clause (a) of Section 30 i.e. last date for making nomination;
- (ii) time within which nomination paper can be delivered to the R.O. is 11 A.M. to 3 P.M. of each date;
- (iii) nomination paper must be in the prescribed form complete in respect to all the entries and signed by candidate as also proposer(s);
- (iv) as soon as nomination paper is presented before R.O., he shall satisfy himself about correctness of names and electoral roll number of candidate and his proposer(s) as entered in nomination paper vis a vis electoral roll;
- (v) R.O. if finds any clerical or printing error, inaccurate description or misnomer in regard to name of candidate or his proposer(s) or in regard to any place mentioned in electoral roll or nomination paper, he shall permit such misnomer, inaccurate description etc. to be corrected by the person presenting/delivering nomination paper to him;
- (vi) R.O. on receiving nomination paper shall inform the person or persons delivering the same, the date, time and place fixed for scrutiny of nomination;
- (vii) simultaneously, R.O. shall enter on nomination paper its serial number and, shall also sign on the same date and almost simultaneously a certificate, stating the date on which nomination paper has been delivered to him;
- (viii) R.O. shall also cause to be affixed in some conspicuous place in his office a notice of nomination containing description similar to those contained in nomination paper both of the candidate and of proposer(s).

Procedure to be observed on the date of scrutiny

40. The candidates, their election agents, one proposer of each candidate and on other person duly authorised in writing by each candidate may attend the place fixed by R.O. for scrutiny of nomination at the place and time fixed by him. The R.O. shall give the aforesaid persons all reasonable facilities for examining nomination papers of all candidates which he was delivered within time and manner laid down in Section 33. R.O. shall himself examine nomination papers and decide all objections made to any nomination. He can reject any nomination if (a) candidate is not qualified or is disqualified

for being chosen to fill the seat for which nomination has been submitted, (b) if there is failure to comply Section 33 or Section 34 (iii) signature of candidate or proposer(s) on nomination paper is not genuine.

41. If the candidate concerned has submitted more than one nomination papers and in one of such papers his nomination is found in order, his candidature shall not be rejected on any of the grounds of non-compliance of Section 33, 34 or in respect to signatures. The R.O. shall not reject nomination paper for a defect which is not of a substantial character. Proceedings of scrutiny shall not be adjourned except with interruption or obstructed by riot, or open violence or by causes beyond his control. R.O. shall endorse his decision of acceptance or rejection of nomination.

42. If a nomination paper is rejected, the R.O. shall also record brief statement of reasons in writing for such rejection. After nomination papers are scrutinized and decision accepting or rejecting the same is complete in respect to all the nomination papers, immediately thereafter R.O. shall prepare a list of validly nominated candidates and affix the same to his notice board.

43. From the above, it is evident that the legislature on the one hand has stressed upon observance and compliance of requirements of Sections 33 and 34 of Act 1951, simultaneously, has not authorised the R.O. to reject nomination if the defect is not substantial one and/or if there are some discrepancies like, misnomer, inaccurate description or clerical, technical or printing error in regard to name of candidate or his proposer or any other person or in regard to any place. These errors may be either in electoral roll, or in the nomination paper but they shall not authorise the R.O. to reject the nomination paper as such, and, he is required to allow the candidate to rectify/correct the errors and/or such error etc. shall be overlooked.

44. Now the question cropped up for consideration would be, what is the meaning of the phrase “defect not substantial one”.

45. A Constitution Bench in **Karnail Singh Vs. Election Tribunal, Hissar, and Others 1954 ELR (Vol-X) 189 = AIR 1954 SC 207** considered whether omission to state Part of electoral roll in which candidate's name appeared to be a fatal defect or not. The Court said, if there was no difficulty in identifying the candidate and the candidate himself pointed out to the R.O. the entry of his name in the electoral roll, defect in such a case must not be taken to be fatal but it was a technical one and rejection of nomination paper for this very reason was improper.

46. The purpose of mentioning of sub division in electoral roll in which serial number occurs is for assistance of R.O. and to facilitate identification of proposer etc. so that no time is wasted in ascertaining whether the proposer is a person qualified to act as such, when there is no doubt about identify of proposer or his capacity to act as proposer. A mere omission of a small detail in his description on nomination paper ought not affect the matter.

47. In **Ram Awadhesh Singh Vs Smt. Sumitra Devi and Others AIR 1972 SC 580**, Two-Judge's Bench of Supreme Court considered whether misdescription as to electoral roll and electoral roll number would constitute a material defect, justifying rejection of nomination paper. The Court observed that so far as the candidate is concerned, he was admittedly qualified to be nominated for election. The only thing said against is that nomination paper was not properly filled in. Referring to Section 33(4) of Act 1951 the Court said:

“.... a duty is imposed on the Returning Officer by sub-s.(4) of S. 33 to look into the nomination paper when it is presented and to satisfy himself that the names and the electoral roll numbers of the candidate and that of the proposer as entered in the nomination paper are the same as those entered in the electoral roll.”

48. The Court also observed, if the Returning Officer would have looked into nomination paper, he could not have asked the candidate either to correct the mistake or to file a fresh nomination. Commenting upon the implication of Section 33(4) the Court said:

“But the implication of Section 33(4) is that a wrong entry in a nomination paper as regards the name of the candidate or the proposer or their electoral roll numbers is not a matter of substantial importance. That is why the legislature requires the Returning Officer to look into them and if there are any mistakes to get them corrected. What is of importance in an election is that the candidate should possess all the prescribed qualifications and that he should not have incurred any of the disqualifications mentioned either in the Constitution or in the Act. The other information required to be given in the nomination paper is only to satisfy the Returning Officer that the candidate possesses the prescribed qualification and that he is not otherwise disqualified. In other words those informations relate to the proof of the required qualifications.”

49. It went further by observing that legislature itself has made distinction between acceptance of nomination and rejection. Whenever a nomination has to be rejected, R.O. is under statutory duty to give reasons in writing, though there is no such requirement for accepting a nomination. In para 15 of judgment the Court said:

“From a combined reading of Ss. 33 and 36, it is clear that a mis-description as to electoral roll number of the candidate or of the proposer in the nomination paper is not to be considered as a material defect in the nomination paper.”

50. In **Rangilal Choudhury Vs. Dahu Sao AIR 1962 SC 1248**, a candidate mentioned the name of constituency as Bihar instead of Dhanbad. The Court held that it is not a mistake justifying rejection of nomination and after referring to Section 33(4) and 36(2)(b) and (4) the Court said.

“The result of these provisions is that the proposer and the candidate are expected to file the nomination papers complete in all respects in accordance with the prescribed form; but even if there is some defect in the nomination paper in regard to either the names or the electoral roll numbers, it is the duty of the returning officer to satisfy himself at the time of the presentation of the nomination paper about them and if necessary to allow them to be corrected, in order to bring them into conformity with the corresponding entries in the electoral roll. Thereafter on scrutiny the returning officer has the power to reject the nomination paper on the ground of failure to comply with any of the provisions of S.33 subject however to this that no nomination paper shall be rejected on the ground of any defect which is not of substantial character”

51. In **Ram Awadhesh Singh Vs. Smt. Sumitra (supra)** the Court also observed in para 19 of the judgment that the very fact that the law requires the R.O. to look into nomination paper, when filed and get any mistake regarding the name or electoral number of the candidate or his proposer corrected, shows that the mistake regarding them is not a material defect.

52. In **Brijendralal Gupta Vs. Jwalaprasad AIR 1960 SC 1049** the Court said that the word ‘defect’ in Section 36(4) included an omission to satisfy the details prescribed in the nomination.

53. A three Judge Bench of Apex Court in **Rakesh Kumar Vs. Sunil Kumar AIR 1999 SC 935=(1999) 2 SCC 489** again considered the scope of Section 36(5) read with Section 33 of Act 1951 and held that the R.O. has been vested with discretion to fix time to enable a candidate to rebut an objection to the validity of a nomination paper. Such a discretion has to be fairly and judicially exercised. It was imperative upon him to give opportunity to the candidate to meet the said objection. If there is a failure to exercise his jurisdiction to postpone the decision as to validity of the nomination paper of the candidate concerned, despite he had sought time to meet the objection, it would amount to invalid rejection of nomination. The Court said in para 21 as under:

“The Returning Officer is not expected to reject a nomination paper, without giving an opportunity to the candidate or his representative present at the time of scrutiny to meet an objection, capable of being met, particularly where such an opportunity is sought for by the candidate or his representative and no one present on behalf of the other candidates had opposed the claim made by the respondent.”

54. In **Ram Bhual Vs. Ambika Singh 2005 (12) SCC 121** in para 6, the kind of irregularity in the nomination paper has been noticed by the Court which reads as under:

“It is clear that the rejection of the nomination of PW 2 by the Returning Officer was only on the ground that out of the ten proposers, the ninth proposer Sant Lal, was described as the voter at Serial No. 392 in Part 91 of the voters’ List. It is also clear and it is not disputed, that the name of Sant Lal is actually included in the voters’ list, but at Serial No. 352 in Part 91 of the voters’ list. It is also clear that both Serial No. 352 and Serial No. 392 of Part 91, are printed on the same page of the voters’ list. Therefore, it required no detailed search by the Returning Officer to find out or to satisfy himself that Sant Lal, the proposer, was a voter in that constituency.”

55. In para 8 of the judgment the Court said:

“It is clear from Section 36(4) of the Act that the Returning Officer shall not reject any nomination paper on the ground of any defect which is not of a substantial character, Section 33(4) of the Act provides that on the presentation of a nomination paper, the Returning Officer has to satisfy himself that the names and the electoral roll numbers of the candidate and his proposer as entered in the nomination paper are the same as those entered in the electoral roll. The proviso thereto clearly provides that no misnomer or inaccurate description or clerical, technical or printing error in regard to the name of the candidate or his proposer or any other person, or in regard to any place, mentioned in the electoral roll or the nomination paper and no clerical,

technical or printing error in regard to the electoral roll numbers of any such person in the electoral roll or the nomination paper, shall affect the full operation of the electoral roll or the nomination paper with respect to such person or place and in a case where there was an error in the nomination paper in regard to the description, he shall direct that the same be corrected and he could even overlook such errors. It is in the context of the proviso to Section 33(4), that the case set up by the appellant of Sita Ram drawing the attention of the Returning Officer to the defect being only an error in the serial number and that Sant Lal, the ninth proposer, was actually at Serial No. 352 on the same page of the voters' list assumes great significance. It is a minor defect which obviously should have been got corrected by the Returning Officer even while accepting the nomination and certainly he could not have rejected the nomination on that ground in the light of Section 36 (4) of the Act."

56. The cases which may give rise to a ground for challenge an election under Section 100(1)(c) and 100(1)(d)(i), were considered by the Apex Court in **N.T. Veluswami Thevar v. G. Raja Nainar and Ors. AIR 1959 SC 422** and the Court said:

*"...Under Section 32 of the Act, any person may be nominated as a candidate for election if he is duly qualified under the provisions of the Constitution and the Act. Section 36(2) authorises the Returning Officer to reject any nomination paper on the ground that he is either not qualified, that is, under Sections 3 to 7 of the Act, or is disqualified under the provisions referred to therein. **If there are no grounds for rejecting a nomination paper under Section 36(2), then it has to be accepted, and the name of the candidate is to be included in a list.** Vide Section 36(8). Then, we come to Section 100(1)(c) and Section 100(1)(d)(i), which provide a remedy to persons who are aggrieved by **an order improperly rejecting or improperly accepting any nomination.** In the context, it appears to us that the improper rejection or acceptance must have reference to Section 36(2), and that the rejection of a nomination paper of a candidate who is qualified to be chosen for election and who does not suffer from any of the disqualifications mentioned in Section 36(2) would be improper within Section 100(1)(c), and that, likewise, acceptance of a nomination paper of a candidate who is not qualified or who is disqualified will equally be improper under Section 100(1)(d)(i)."*

57. The Apex Court noticed the instructions contained in Handbook of ECI in respect to what is required to be done by R.O. while nomination paper is to be scrutinized and in para 29 of the judgment in **Uttamrao Shivdas Jankar Vs. Ranjitsinh Vijaysinh Mohite-Patil AIR 2009 SC 2975** the Court said in para 29 as under:

*"29. While exercising his quasi-judicial power, in terms of the provisions of the Act, it was **incumbent upon the Returning Officer to follow the instructions contained in the Handbook.** It provides for:*

- (i) opportunity to be given to candidate to **rebut the objections by placing sufficient materials on record:***
- (ii) A presumption of validity of such nomination paper."*

58. It cannot be disputed that the instructions contained in the Handbook of ECI are binding being statutory in nature as held in **Rakesh Kumar Vs. Sunil Kumar (Supra)** reiterated in **Uttamrao Shivdas Jankar (Supra)** (vide para 30 of the judgment). The Court also observed that with respect to correctness of nomination paper there is presumption of correctness and that too, being statutory in nature. In paragraph 35 of the judgment in **Uttamrao Shivdas Jankar (supra)** the Court said:

"35. The presumption of correctness of the nomination paper being statutory in nature, as intention of the Parliament as also the Election Commission was that even if somebody had filed an improper nomination, but for which he can be given benefit of doubt being a possible subject matter of an election petition...."

59. There are some authorities of the Apex Court which have been relied by respondents and it would be appropriate to discuss the same also so as to examine the facts of the present case in the light of exposition of law in all the authorities of Supreme Court to find out whether rejection of nomination of petitioner is valid, just legal or not.

60. In **Rattan Anmol Singh and Another Vs. Atma Ram and Others AIR 1954 SC 510** the question up for consideration before the Apex Court was what is the meaning of word 'subscribed' in Section 33(1) and what is its effect on nomination paper. The Court observed that 'subscribe' means 'signing'. In para 12 of the judgment the Court said:

"It is true the word "subscribe" is not defined but it is equally clear, when the Act is read as a whole along with the form in the second schedule, that "subscribe" can only be used in the sense of making a signature and as the

Act tells us quite clearly how the different types of "signature" are to be made, we are bound to give effect to it. In the case of a person who is unable to write his name his "signature" must be authenticated in "such manner as may be prescribed." The prescribed manner is to be found in rule 2(2) of the Representation of the People (Conduct of Elections and Election Petitions) Rules, 1951."

61. Then in para 13, the Court said that nomination papers having not been "signed" by the proposers and seconders in the usual way by writing their names, and as their marks were not attested it would lead to an inference that there are no valid signatures either of proposer or seconder in any nomination paper and, therefore, R.O. would be bound to reject under Section 36(2)(d) unless he could and should have resort to Section 36(4) of Act 1951. This Court considered whether the aforesaid error is a mere technical or substantial and held:

"In our opinion, this provision is as necessary and as substantial as attestation in the case of a will or a mortgage and is on the same footing as the "subscribing" required in the case of the candidate himself. If there is no signature and no mark the form would have to be rejected and their absence could not be dismissed as technical and unsubstantial. The "satisfaction" of the Returning Officer which the rules require is not, in our opinion, any the less important and imperative."

62. Then in para 15 of the judgment it was held that attestation and satisfaction etc. is all an exercise to be taken before scrutiny and the R.O. cannot permit any rectification at the stage of scrutiny. In para 15 of the judgment the Court said:

"....attestation and the satisfaction must exist at the presentation stage and a total omission of such an essential feature cannot be subsequently validated any more than the omission of a candidate to sign at all could have been. Section 36 is mandatory and enjoins the Returning Officer to refuse any nomination when there has been

"any failure to comply with any of the provisions of section 33....."

The only jurisdiction the Returning Officer has at the scrutiny stage is to see whether the nominations are in order and to hear and decide objections. He cannot at that stage remedy essential defects or permit them to be remedied. It is true he is not to reject any nomination paper on the ground of any technical defect which is not of a substantial character but he cannot remedy the defect. He must leave it as it is. If it is technical and unsubstantial it will not matter. If it is not, it cannot be set right."

63. In Bhogendra Jha Vs. Manoj Kumar Jha AIR 1996 SC 2099, a three Judges Bench of the Apex Court considered as to what is a defect of substantial character. The Court referred to its decision in **Rafiq Khan Vs. Laxmi Narayan Sharma (C.A. No. 6478 of 1995 decided on 14.3.1996)** and observed as under:

" Unless the defect is one which can be per se noticed and corrected at the stage of Section 33(4) or later at the stage of Section 36(4) without the need to refer to various other documents the same cannot be said to be of a non-substantial character. In the instant case also the defect as to the number could have been said to be not of a substantial character if the appellant had shown that the name of the proposer appeared on the very same sheet at serial number 138 instead of 136 i.e. only two steps away. In that case one can say that the Returning Officer could have verified the same if he had exercised due diligence. In such a situation even if the appellant had his proposer absent the court could have taken the view that the defect was not of a substantial nature. But the defect cannot be noticed unless the Returning Officer is required to sift through various other documents or the voters list or is required to undertake an enquiry as to whether the proposer's name appears anywhere else in the voters list. The defect may not be one capable of being cured without the assistance of the candidate or his proposer and in such a situation he would be justified in rejecting the nomination paper."

64. The exercise which could have been undertaken by R.O. under Section 36(4) has further been elaborated in paragraphs 7 and 8 of the judgment observing:

"Under Section 36(4) of the Act, the Returning Officer shall not reject any nomination paper on the ground of any defect which is not of a substantial character; Under Section 36(1), the Returning Officer has the power to conduct an enquiry. It is settled law that it is a summary enquiry. When the Returning Officer scrutinises the nomination paper, the parties or the nominees are required to be present and if they seek liberty to place the necessary material, the Returning Officer is enjoined to adjourn the case to the next day. In case they are able to place the necessary material and satisfy the Returning Officer of the correctness of the enrolment as a candidate or the address of the nominee, the Returning Officer would consider the same. But he is not expected to sift the evidence and find the placement in the electoral roll, the name and particular of the nominee." (para-7)

“ In this case, PWs 4 and 6 who were the candidates and had filed their nominations, though admittedly were present, did not ask for an opportunity nor attempted to satisfy the Returning Officer as to the correctness of the particulars furnished by them in the nomination papers of their proposers. Therefore, the Returning Officer was not expected to make a roving enquiry to find out whether the names of the proposers found place in the electoral roll. It is the duty of the candidate/proposer to satisfy the Returning Officer.”

65. In an earlier decision similar observations were made i.e. **Brij Mohan Vs. Sat Pal AIR 1985 SC 847**. In para 20 of the judgment the Court said:

“.....The candidate and the proposer are always expected to go fully prepared to meet any objection that may be raised by any candidate or even by the Returning Officer himself suo motu at the time of the scrutiny and they cannot be expected to go any the less prepared merely because the Returning Officer had received the nomination paper without raising any objection. It is at the time of scrutiny which is done in the presence of all concerned that the nomination papers come up for more detailed consideration at the hands of the Returning Officer against whom there is no estoppel in regard to the statutory duty of scrutiny”

66. In para 22 of the judgment the Court also said that R.O. is not expected to make a roving inquiry and has also to find out himself correct part number of the electoral roll.

67. In **Hira Singh Pal Vs Madan Lal AIR 1968 SC 1179** the Court observed:

“As mentioned earlier, the errors found in the nomination papers are purely clerical errors. The Returning Officer had the duty to scrutinise the nomination papers when they were presented for finding out whether there were any clerical mistakes in the same. Under that provision he was required to find out whether the names of the candidates as well as their proposers and seconders were correctly mentioned in the nomination papers. He was also required to see whether their place in the electoral roll was correctly mentioned in the nomination papers. Evidently the Returning Officer failed in his duty. Further, when he scrutinised the nomination papers on January 21, 1967, he had before him all the required information. It may be that while scrutinising the first nomination paper (marked as No. 5) he had no material before him to find out whether the proposer of the candidate was really an elector in the constituency or not; but when he came to the second nomination paper where the proposer's name as well as his place in the electoral roll is correctly mentioned, it was improper on his part to have rejected that nomination paper. It is true that in that nomination paper, it had been mentioned that the candidate's name is found at serial No. 504 of part 2 of 9-Arki Assembly Constituency, though in fact it is found at serial No. 504 in part 12 of that constituency; but from the first nomination paper, the Returning Officer could have easily found out the correct part of the electoral roll. All the required information was before him. Obviously he rejected the nomination papers for the reason that the respondent was only a dummy candidate but that was not a matter for him to decide. If he was a dummy candidate there was occasion for him to withdraw his candidature after the scrutiny of the nomination papers. Therefore, it is quite clear that the respondent's nomination papers were improperly rejected. Such a rejection was impermissible under S. 36 and the same is a ground for setting aside the election under S. 100 of the Representation of the People Act.”

68. In **Lila Krishan Vs. Mani Ram Godara and Ors AIR 1985 SC 1073(1)** the Apex Court in para 13 of the judgment said:

“13. Indisputably the insistence on disclosure of the serial number in the prescribed column against the proposer is for the purpose of identifying the proposer and ascertaining that he is competent to propose. The scope of scrutiny is obviously to verify the contents of the nomination paper with a view to ascertaining whether the form is in order and what is required to be complied with by the election law has been duly complied with. This Court has repeatedly held that election proceedings are strict in nature and what is required to be performed in a particular manner has to be done as required and substantial compliance has ordinarily no place while dealing with the Act or the Rules made thereunder. That is why an exception has been made by inserting Sub-section (4) of Section 36 of the Act.”

69. Further in para 14 of the judgment the Court said:

“ To cast the obligation on the Returning Officer to look through the entire electoral roll of a particular part with a view to finding out the identity of the proposer is not the requirement of the law. To read that as an obligation is likely to lead to a unworkable position. The prescribed form of nomination (form 2-B) does not require to specify the name of the father of the proposer. That actually does not become necessary because once

the name and the serial number in the voters' list are given, the cross-verification become easy and the father's name is available in the electoral roll. In one part of the electoral roll on the average names of about a thousand voters appear. Out of one thousand name it is quite possible that there would be more than one voter by the same names. Identification of any particular voter out of such list even when there are more voters with the same name is possible only with further reference to the father's name. To cast the obligation of verifying the entire electoral roll of a particular part is actually requiring the Returning Officer to do almost an impossible feat. It may not be so if there be a few candidates and it be a case of a by-election but when general election takes place and every Returning Officer is supposed to handle about seven or eight Assembly Constituencies and there may be instances of even 300 candidate contesting from one seat as it happened in the 1985 elections in the Belgaum Constituency of Karnataka State, the Returning Officer would find it physically impossible to grapple with such a situation. The election schedule is a very tight one. Under the law the day following the last day fixed for receipt of nomination papers is the date of scrutiny and soon thereafter follows the date fixed for withdrawal. If nomination papers are not scrutinised with due haste and promptness the election schedule may not be operative in the strict manner and dislocation are bound to follow.

70. Ultimately, in para 16 the Court said:

"But if the Returning Officer is not in a position to correlate and identify the proposer, the mistake would indeed be not one which can be covered by Sub-section (4) of Section 36 of the Act. That view has been taken recently by this Court in Brij Mohan v. Sat Pal Civil Appeal No. 2650/84 disposed of on 13.3.85, to which two of us are parties. We endorse the ratio of the decision and applying the same, we agree with Mr. Sibal that the nomination papers were validly rejected in this case."

71. Going by exposition of law as set out above, I find that admittedly, the electoral roll to verify the particulars of proposers therefrom was not available with the petitioner. The petitioner himself has admitted in para 11 of election petition that he applied for certified copy of voter list regarding himself as well as 10 proposers on 11.04.2009 i.e., on the date of scrutiny. In the oral deposition, the petitioner PW1 has admitted that prior to 11th April 2009 he had not submitted any application for supply of voter list. The reason he has given is that it was not necessary at all since the computers are available and entire information is fed therein, the officers could have verified details of the proposers from the computer. His statement reads as under:

"मैंने वोटर लिस्ट के बारे में पहले 11-4-2009 से पहले इसलिए अर्जी नहीं दी थी इसकी आवश्यकता नहीं थी अब तो कम्प्यूटर उपलब्ध हो गये हैं और सारे नाम कम्प्यूटर में उपलब्ध होते हैं अधिकारीगण प्रस्तावकों के बारे में कम्प्यूटर से अपने आप पता कर लेते हैं।"

"I had not applied for voter list prior to 11.4.2009 because the same was not needed. Now computers are available and all names are therein. Officers themselves verify about the proposers from computers." (English Translation by Court)

72. Electoral rolls are prepared and finalized before issuance of notification under Sections 30 and 31 of Act 1951. Section 13-D of Part IIB of the Representation of the People Act, 1950 (hereinafter referred to as "Act 1950") provides for electoral rolls for parliamentary constituencies. The electoral roll for every parliamentary constituency, other than a parliamentary constituency in the State of Jammu and Kashmir or in a Union Territory, not having a Legislative Assembly, shall consist of the electoral rolls for all the assembly constituencies comprised within that parliamentary constituency; and it shall not be necessary to prepare or revise separately the electoral roll for any such parliamentary constituency.

73. Part III of Act 1950 contains provision with respect to electoral rolls for Assembly Constituencies. Preparation and revision of electoral rolls are provided in Section 21 of Act 1950 which reads as under:

"21. Preparation and revision of electoral rolls.--(1) *The electoral roll for each constituency shall be prepared in the prescribed manner by reference to the qualifying date and shall come into force immediately upon its final publication in accordance with the rules made under this Act.*

(2) *The said electoral roll—*

(a) shall, unless otherwise directed by the Election Commission for reasons to be recorded in writing, be revised in the prescribed manner by reference to the qualifying date—

(i) before each general election to the House of the People or to the Legislative Assembly of a State; and

- (ii) before each bye- election to fill a casual vacancy in a seat allotted to the constituency; and
- (b) shall be revised in any year in the prescribed manner by reference to the qualifying date if such revision has been directed by the Election Commission:

Provided that if the electoral roll is not revised as aforesaid, the validity or continued operation of the said electoral roll shall not thereby be affected.

(3) Notwithstanding anything contained in sub-section (2), the Election Commission may at any time, for reasons to be recorded, direct a special revision of the electoral roll for any constituency or part of a constituency in such manner as it may think fit:

Provided that subject to the other provisions of this Act, the electoral roll for the constituency, as in force at the time of the issue of any such direction, shall continue to be in force until the completion of the special revision so directed"

74. Correction of entries in electoral roll is permissible as per procedure prescribed in Section 22 of Act 1950 which reads as under:

"22. Correction of entries in electoral rolls.-- If the electoral registration officer for a constituency, on application made to him or on his own motion, is satisfied after such inquiry as he thinks fit, that any entry in the electoral roll of the constituency-

- (a) is erroneous or defective in any particular,
- (b) should be transposed to another place in the roll on the ground that the person concerned has changed his place of ordinary residence within the constituency, or
- (c) should be deleted on the ground that the person concerned is dead or has ceased to be ordinarily resident in the constituency or is otherwise not entitled to be registered in that roll,

the electoral registration officer shall, subject to such general or special directions, if any, as may be given by the Election Commission in this behalf, amend, transpose or delete the entry:

Provided that before taking any action on any ground under clause (a) or clause (b) or any action under clause (c) on the ground that the person concerned has ceased to be ordinarily resident in the constituency or that he is otherwise not entitled to be registered in the electoral roll of that constituency, the electoral registration officer shall give the person concerned a reasonable opportunity of being heard in respect of the action proposed to be taken in relation to him.

75. Section 23 of Act 1950 lays down procedure for inclusion of names in electoral rolls. Sub-section (3) of Section 23 reads as under:

"(3) No amendment, transposition or deletion of any entry shall be made under section 22 and no direction for the inclusion of a name in the electoral roll of a constituency shall be given under this section, after the last date for making nominations for an election in that constituency or in the parliamentary constituency within which that constituency is comprised and before the completion of that election."

76. After the last date for making nomination for election in the assembly constituency or parliamentary constituency, as the case may be, no amendment, transposition or deletion of any entry under section 22 or inclusion thereunder is permissible. It is not the case of the petitioner, and, in fact, it has not been pleaded that with respect to particulars of his 10th proposer Munna Lal, there was any attempt on his part or on the part of his proposer to make any correction or inclusion in the name of electoral roll on or before 09.04.2009 which was the last date for making nomination. Since the petitioner applied for certified copy of electoral roll only on 11.04.2009, meaning thereby, that by that time, no change whatsoever, was permissible in electoral roll in view of Section 23(3) of Act 1950. Section 33(1) of Act 1951 read with Rule (2) (1) (e) and (f) of Rules 1961 talk of elector and electoral roll. The term 'elector' has been defined in Section 2(e) of Act 1951 which reads as under:

"elector" in relation to a constituency means a person whose name is entered in the electoral roll of that constituency for the time being in force and who is not subject to any of the disqualifications mentioned in section 16 of the Representation of the People Act, 1950" (emphasis added)

77. Therefore, information and particulars of proposers which have to be mentioned in the nomination paper must tally with electoral roll and not anything else. The R.O. is entitled to verify the particulars from electoral roll as available with him and is not supposed to look into any other matter ignoring the electoral roll made and finalized upto last date of nomination as available to him. Questions no.1 and 2, in view of above have to be answered against the petitioner and are answered accordingly.

78. Now coming to questions no. 3, 4 and 5 collectively, it has already come on record that particulars filled in by petitioner in the nomination paper in respect of some of proposers did not tally with the corresponding entries in the electoral roll of relevant constituency. Name of one of proposers, in fact did not find mention in any of electoral rolls of respective constituencies. The petitioner admittedly had no material to assist or inform the R.O. about correct position either on the date of nomination or even on the next date. On the date of scrutiny also he did not possess any such material.

79. The record shows that he had filed application before R.O. only on 11.04.2009 itself to supply certified copy of electoral roll and not earlier thereto though it is alleged that he moved application earlier. That fact could not be substantiated. On the contrary, he admits in his oral deposition that before 11.04.2009 he had not submitted any application requesting for copy of electoral roll though the same could have been supplied by R.O. as is permitted and provided in Section 152 of Act 1951.

80. In **Lila Krishan Vs. Mani Ram Godara (supra)**, the Court observed that prescribed form of nomination does not require to specify the name of father of proposer looking to the fact that a number of candidates may have filed their nomination before R.O. and thousands and thousands voters' electoral roll is available with him. To cast an obligation on R.O. to look though entire electoral roll of a particular Part with a view to find out identity of proposer(s) would amount to place an reasonable and unwarranted burden upon R.O., which may render his functioning almost impracticable and impossible. The above observations clearly apply in this case also. It cannot be said that in absence of any assistance whatsoever from the petitioner in respect of verification of particulars of proposers, it should be taken an obligation on the part of R.O. to check and verify the same.

81. In the absence of any assistance by petitioner to R.O. so as to verify particulars of proposers, particularly in respect of Munna Lal, Sunil and Smt. Sunita whose particulars of electoral roll number, serial number in the Part of Electoral Roll were not only incorrect but had wide deviation, it was not only difficult but impossible for R.O. to verify from the list of electors running in thousands since it was a General Election for a Parliamentary seat. Similarly, in respect of Devi Das also, non-mention of Serial Number in column 4 is a serious and substantial defect particularly in the circumstances, when petitioner was not in a position to satisfy or assist R.O. to find out name of proposer in electoral roll. Over and above all these, a fatal blow comes from the fact that name of Munna Lal has not been found mentioned in any electoral roll of the concerned constituency. It is not disputed before this Court that he was not a voter in the concerned constituency. This single defect results in, that, there remains only nine proposers of relevant constituency for the petitioner. Hence, the nomination form being not proposed by ten electors of the constituency, as contemplated in Section 33(1), first proviso, it was liable to be rejected and has rightly been done so by R.O.

82. All the three questions no. 3, 4 and 5 are thus answered in negative and against the election petitioner.

83. In the result, to summarize, issues framed, stand answered in the following manner :

- (a) Issue No. 1 answered in affirmance, holding that it was incumbent upon the petitioner to get nomination paper scribbled by ten proposers, being electors of 46 Jhansi Parliamentary Constituency by giving their relevant particulars, names, electoral roll number and serial number in the nomination paper;
- (b) Issue no. 2 is answered in negative, i.e., against the petitioner and it is held that whatever is required by the Rules and the information required to be given in nomination paper, is to be complied with in the manner prescribed and could not have been altered or substituted by the candidate in the manner he likes, i.e., appending copy of voter's card.
- (c) Issue no. 3 is also answered in affirmance to the extent that it was duty of the petitioner to prepare himself by getting all relevant material to satisfy R.O. when the nomination paper was delivered about the correctness of entries mentioned therein, till the last date of nomination or within such time as permitted but before the date of scrutiny of nomination paper;
- (d) Issue no. 4 is answered in favour of the respondent, returned candidate.
- (e) Issue no. 5 is decided against the petitioner, holding that his nomination paper was rejected validly.
- (f) Having regard to findings on issues no. 1 to 5, the petitioner is not entitled to any relief. Issue no.6 stands decided accordingly.

84. Resultantly, the election petition is dismissed with costs, quantified to Rs. Five Thousand only.

Dated: 8th March 2013.

Sd/-

SUDHIR AGARWAL, J.

[No. 82/UP-HP/2/2009(Alld.)]

By Order,

R. K. SRIVASTAVA, Principal Secy.

नई दिल्ली, 14 जून, 2013

आ.अ. 35.—लोक प्रतिनिधित्व अधिनियम, 1951 (1951 का 43) की धारा 106 के अनुसरण में, भारत निर्वाचन आयोग 2009 की निर्वाचन अर्जी संख्या 3 में इलाहाबाद उच्च न्यायालय के तारीख 2 अप्रैल, 2013 के निर्णय को एतद्द्वारा प्रकाशित करता है।

(निर्णय इस अधिसूचना के अंग्रेजी भाग में छपा है।)

[सं. 82/उ.प्र.-लो.स./3/2009(इला.)]

आदेश से,

आर. के. श्रीवास्तव, प्रधान सचिव

New Delhi, the 14th June, 2013

O.N. 35.—In pursuance of Section 106 of the Representation of the People Act, 1951 (43 of 1951), the Election Commission of India hereby publishes the Judgement dated 2nd April, 2013 of the High Court of Judicature at Allahabad in Election Petition No. 3 of 2009.

IN THE HON'BLE HIGH COURT OF JUDICATURE AT ALLAHABAD

ELECTION PETITION NO. 3 OF 2009

IN THE MATTER OF:

Bhagwat Narayan Chaurasia, aged about 48 years, son of
Sri Kavleshwar Nath Chaurasia, resident of House No. 138,
Western Bazar, Mugal Sarai, District-Chandauli.

...Petitioner

VERSUS

Ram Kishun, son of late Ganji, resident of Village Bauri,
Post Office-Niyamtabad, District-Chandauli

...Respondent

1. That the petitioner is Bhagwat Narayan Chaurasia, aged about 48 years, son of Sri Kavleshwar Nath Chaurasia, resident of House No. 138, Western Bazar, Mugal Sarai,

Court No. - 22

Case : ELECTION PETITION No. - 3 of 2009

Petitioner : Bhagwat Narayan Chaurasia

Respondent : Ram Kishun

Petitioner Counsel : In Person, D.S.P. Singh, K.K. Singh, K.R. Singh, Niranjana Singh, Nisar Ahmad, Rajesh Kumar Singh, Surendra Yadav

Respondent Counsel : K.R. Singh, N.K. Pandey, Rajendra Singh, Shubhranshu Shekhar, Sudhanshu Shekhar

Hon'ble Vijay Prakash Pathak, J.

This Election petition is taken up in the revised list. None appears for the petitioner. Learned counsel for the respondent is present.

Accordingly, this petition is dismissed for want of prosecution.

Sd/-

VIJAY PRAKASH PATHAK, J.

Order Date :- 2.4.2013

[No. 82/UP-HP/3/2009 (Alld.)]

By Order,

R. K. SRIVASTAVA, Principal Secy.